

Statement of Representative Ron Kind
Limit Medical Malpractice Awards, HR 4280
May 12, 2004

Mr. Speaker, my home state of Wisconsin has sensible medical malpractice laws that make the state attractive to doctors and safe for patients. The components of this successful law include a cap on non-economic damages of \$442,000, which is indexed annually for inflation; a requirement that all providers carry malpractice insurance; and a victims' compensation fund.

The victims' compensation fund is a unique entity that has served both patients and health care providers well. The fund operates by collecting contributions from Wisconsin health care providers and paying the victims once an award has been determined. The physicians are liable only for the first \$1 million in an award. If the award exceeds \$1 million, the compensation fund will pay the remainder of the award. For several years now, this system has served the state well. Like many of my colleagues, I believe that we need sensible malpractice reform, and were the bill before us today similar to Wisconsin's system, I would be proud to support it.

Unfortunately, HR 4280 is vastly different from Wisconsin law and goes too far in defending negligence and not far enough in protecting patients. The legislation goes beyond medical malpractice law by including provisions regarding pharmaceutical and medical devices and completely exempts from liability medical device makers and distributors as well as pharmaceutical companies, as long as the product complies with FDA standards. These provisions would have no effect on medical malpractice insurance rates. Instead, they would leave victims with little recourse and render them unable to hold pharmaceutical companies and the makers of defective medical products accountable for faulty or unsafe products.

Another problem with HR 4280 is that it overrides some state laws. While the bill would not override Wisconsin's own cap on non-economic damages, it would supersede our state laws regarding statute of limitations, attorneys' fees, and the criteria for punitive damages. This bill is a one-size fits all solution that is not right for Wisconsin.

The successful components of Wisconsin's medical malpractice laws could be the basis for a much better bill. Wisconsin law protects patients and keeps physicians in business. These laws are threatened, however, by the current proposal. Therefore, I oppose H.R. 4280 and ask my colleagues to defeat the bill, revisit the issue, and create a more sensible plan that will protect patients and help doctors.